

1604230 (Refugee) [2017] AATA 679 (19 April 2017)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1604230
COUNTRY OF REFERENCE:	Albania
MEMBER:	Christopher Smolicz
DATE:	19 April 2017
PLACE OF DECISION:	Adelaide
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 19 April 2017 at 3:49pm

CATCHWORDS

Refugee – Protection visa – Albania – Bogus documents – Fraudulent passport – Social group – Homosexual – Schengen zone countries – Third country protection – Credibility issues

LEGISLATION

Migration Act 1958, ss 5(1), 36, 65, 91WA, 438(1)(a), 499

Migration Regulations 1994, Schedule 2

Migration Amendment (Protection and Other Measures) Act 2015, Section 2

CASES

BGM16 v MIBP [2016] FCCA 2297

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the Migration Act 1958 and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Albania, applied for the visa [in] September 2014 and the delegate refused to grant the visa [in] March 2016.
3. The applicant appeared before the Tribunal on 13 April 2017 to give evidence and present arguments. The applicant provided the Tribunal with the delegate's decision refusing his protection application.
4. The Tribunal hearing was conducted with the assistance of an interpreter in the Albanian and English languages. The applicant was represented in relation to the review by his registered migration agent.
5. At the commencement of the hearing the applicant raised concerns about using an Albanian interpreter and requested [a Country 1] interpreter. The Tribunal noted that the agent had requested an Albanian interpreter in response to the hearing invitation. The applicant said he spoke [Country 1 language] and Albanian and that there was no language issue or conflict with the interpreter before the Tribunal. The applicant said that he has a bad experience with one Albanian person ([Mr A]) when he arrived in Australia and he did not feel comfortable discussing his claims before an Albanian interpreter. The Tribunal explained to the applicant that hearings before the Tribunal were confidential and the interpreter was a professional who had taken an oath and was not permitted to disclose any information about the hearing. The Tribunal noted that there was no conflict of interest between the applicant and the Albanian interpreter. After explain to the applicant the hearing process the applicant said he agreed to use the Albanian interpreter. The applicant's agent also agreed to proceed with the Albanian interpreter at the hearing.

CONSIDERATION OF CLAIMS AND EVIDENCE

6. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.
7. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is

unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

9. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
10. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

CIRCUMSTANCES PREVENTING THE GRANT OF THE VISA

11. Under s.65(1) of the Act, the Minister (or the Tribunal on review) must refuse to grant a visa if the grant is prevented by s.91WA. Section 91WA(1) requires the Minister to refuse to grant a protection visa to an applicant who provides a bogus document as evidence of their identity, nationality or citizenship, or has destroyed or disposed, or caused the destruction or disposal of, documentary evidence of their identity, nationality or citizenship. However, that requirement will not apply if the applicant has a reasonable explanation for the provision, destruction or disposal, and either provides relevant documentary evidence or has taken reasonable steps to provide such evidence: s.91WA(2). Section 91WA and the definition of 'bogus document' are extracted in the attachment to this decision. The provisions of s.91WA of the Act were introduced into the Act with effect from 18 April 2015 and apply to all applications currently before the Tribunal as at that date,¹ including this application.
12. The issue in this case is whether the grant of the visa prevented by s.91WA.
13. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

14. Background

15. The applicant claims he was born on [Date of birth 1] in [Albania]. He entered Australia [in] August 2014 as the holder of a [temporary] visa using [a Country 1] passport ([number]). Both the visa and the passport were issued in the identity of [Mr B], [different date of birth].
16. [In] September 2014 the applicant lodged a protection visa application and declared [Mr B] was his friend who gave him the [Country 1] passport to enable him to travel to Australia. The applicant subsequently provided the Department with a biometric Albanian passport which was issued in the name of [the applicant], [Date of birth 1]. The passport was issued [in] 2010 and is valid to [2020]. The applicant claimed that this was his true identity.
17. The applicant claimed that he has been residing in [Country 1] since [April] 2006 and has a right to enter and reside in [Country 1]. He declared that he speaks, reads and writes in Albanian and [Country 1 language]. He provided the Department with a copy of his [Country

¹ Section 2 of the *Migration Amendment (Protection and Other Measures) Act 2015*

1] drivers licence in the name of [applicant's name] and his [Country 1] residency permit card [also] issued in the name of [applicant's name].

18. The Tribunal has regard to the applicant's Albanian passport ([number]) and his [Country 1] identity documents accepted that the applicant's name was [applicant's name] [Date of birth 1].
19. According to the delegate's decision, the Department's Document Examination Unit (DEU) found that the [Country 1] passport in the name of [Mr B] was a legitimately manufactured document and that there was no evidence of alteration to the personal data page including the photograph. The DEU noted however that there was some irregularity with the binding of the passport. The DEU deemed that the passport in the name of [Mr B] was a legitimately manufactured document that may have been restitched.
20. The Department found that the applicant travelled to Australia as an imposter using the assumed identity of [Mr B] and that the identity fraud was not detected by the Departmental officers [at a named] Airport and the applicant was immigration cleared and permitted to enter Australia.
21. The delegate also found that [in] November 2013 the applicant was detected at [a Country 2] airport attempting to travel to Australia using a photo-substitute [Country 1] Passport in the name of [Mr C]. On that occasion the applicant was prevented from onward travel to Australia.
22. The applicant's past travel history and use of the [Country 1] passport issued in the name of [Mr B] and the use of the false [Country 1] passport in the name of [Mr C] was not disputed by the applicant at the hearing.

23. *Claims for protection*

24. The applicant claims he is homosexual. He moved to [Country 1] in April 2006 before he turned [age] years old to live with his [Relative 1] in [City 1]. His [Relative 1] is a permanent [Country 1] resident. He moved to [Country 1] for economic reasons and because the gay community in [City 1] is very open, very free, very accepting in comparison to Albania. After moving to [Country 1] he worked for [a] business as [an occupation].
25. The applicant said his [Relative 2] and [Relative 3] and [Relatives D] also live in [Country 1].
26. The applicant said that his [Relative 1] initially enabled him to obtain a [residence permit]. After about five years his was able to obtain indefinite [Country 1] [residence].
27. The Tribunal noted that as an Albanian passport holder he could travel to any of the 26 Schengen zone countries. The applicant said he could travel to any country in Europe because of his Albanian passport and because he had [Country 1] residence. The applicant said he had travelled for holidays to [European Union countries]. The applicant said that he would travel to Albania once or twice a year to visit his family. If he travelled by road to Albania he would transit through [specified countries]. The applicant provided the Tribunal with a copy of his passport which contained numerous customs stamps as evidence of his travel throughout Europe.

Albania is not included in the Schengen area. However, Albanian citizens who hold biometric passports are granted visa-free travel within Schengen zone countries as of 15 December 2010. Multiple entries are permitted, as long as the total period of stay does not exceed three months within a six month period See 'Q&A: Schengen Agreement' 2011, BBC News, 16 May <http://www.bbc.co.uk/news/world-europe-13194723> and 'Tension builds beneath calm after violence in Albania' 2011, The New York Times.

28. The Tribunal asked the applicant to describe his sexual orientation. The applicant said he was gay. The Tribunal asked the applicant if he was openly gay. The applicant said he had sex with men. The Tribunal explained to that it was asking how he presented his sexuality in the general community. The applicant had difficulty answer the question. After further explanation he said that he was not openly gay and only his gay friends knew he was gay.
29. He had his first gay relationship in 2009. In 2011 he had a relationship with a person called [Mr D]. His relationship with [Mr D] ended in February 2016 after he came to Australia. The Tribunal asked the applicant how he would communicate with [Mr D] when he was in Australia. The applicant said he used the phone and Skype. He did not use [social media] because it was not secure. The Tribunal told the applicant it found his evidence surprising considering that you can communicate privately on [social media] by selecting various settings.
30. The Tribunal notes that according to the delegate's decision the applicant provided the names of a number of gay venues he claimed he would go to in [City 1]. An internet search for the information regarding these venues was carried out by the delegate and failed to provide any information. The applicant claimed in response that the venues were private and entry was by invitation.
31. The Tribunal noted that he moved to [City 1] in 2006 because it was an open and gay friendly city and asked the applicant what prevented him from living in [City 1] openly as a gay man. The applicant said he was not openly gay because he was Albanian. He said he would only attend gay bars that were private and required an invitation.
32. He said that his family only found out he was gay for the first time in 2013. The applicant said that in September or October 2013 his [relative] saw him at a gay bar. The Tribunal asked the applicant how his [relative] managed to see him in gay bar. The applicant claims he was followed. He claims his [relative] confronted him and said he brought shame to his family. The [relative] threatened to kill him.
33. The Tribunal asked the applicant why his [relative] would threaten to kill him because he observed him in a gay bar on one occasion. The applicant said it was a private gay bar and people were laughing and having a good time. After further questioning the applicant said the [relative] had other information but did not expand on his evidence. The Tribunal notes that the applicant has been living in [City 1] since 2006 and found the applicant's explanation about being confronted by his [relative] in 2013 lacking in credibility.
34. The Tribunal asked the applicant to explain how many times he was threatened.
35. The applicant said numerous. When asked to expand on his evidence he said that his father found out he was gay and telephoned him from Albania and said he would kill him on a number of occasions. The Tribunal noted that it was a very extreme reaction for a father to threaten to kill his son.
36. The Tribunal noted that regrettably there was prejudice and discrimination against gay people in many families and in society in general. The Tribunal noted that just because people would make threats and use degrading language did not mean that they would carry through with the threats and commit murder. The Tribunal asked the applicant if his [relatives] and [Relative 2] were criminals who had a predisposition to violence. The applicant said that they were not criminals but Albanians would kill and not worry about the consequences.
37. The applicant said that he paid €[amount] and obtained a false [Country 1] passport with someone else's name. His photo was placed in the passport. He used the false passport in

an attempt to escape to Australia via [a European country] and [Country 2]. He did not succeed and returned to [Country 1].

38. The Tribunal referred the applicant to s.36(3) (third country protection) and noted that the delegate found that he had the right to enter and reside in [Country 1] and he had not applied for protection. The Tribunal referred the applicant to his earlier evidence that [Country 1] was a gay friendly country and that he could have travelled anywhere in Europe using his genuine Albanian passport to escape from his relatives. The Tribunal asked why he chose to pay money and use a false passport and travel to Australia. The applicant said Europe was small and his family could find him. He had an Albanian gay friend who travelled to Australia and said it was a friendly place for gays.
39. The applicant said after his unsuccessful attempt to travel to Australia using the false [Country 1] passport his [Relative 3] came to his place of work and damaged his car and punctured his tyres and threatened to kill him. [Relative 4] and [Relative 2] would also telephone him and threatened kill him and he changed his phone number.
40. The Tribunal asked the applicant if he reported the threats to the [Country 1] police. The applicant said that he did not report it to the police because they would treat it as a family matter.
41. The applicant said he had a gay [Country 1] friend ([Mr B]) who knew he was having problems and offered to allow him use his [Country 1] passport to travel to Australia. The Tribunal asked the applicant if he could name [Mr B's] address. The applicant said he could not remember. The applicant claims he did not pay him any money. He subsequently used the passport to apply for an Australian visa. The applicant said he successfully entered Australia using the [Country 1] passport issued to [Mr B].
42. The Tribunal asked the applicant if he had tried to apply for an Australian visa using his Albanian passport. The applicant said he heard it was difficult and he did not apply for an Australian visa using his Albanian passport.
43. The applicant said he travelled to Australia with [a Country 1] friend [Ms E]. He was scared and could not speak English and [Ms E] came to assist him. He did not pay her any money. She stayed with him in Australia for about one month at a hotel and then with his ex-friend [Mr A].
44. The Tribunal referred the applicant to the delegate's decision and noted that when he was questioned at [named Australian] airport by Australian officials he claimed he was in [a] relationship with [Ms E] which is inconsistent with his claim that was gay. The applicant said he lied because he traveling under someone else's passport and he has previously been unsuccessful.
45. The Tribunal referred the applicant to the delegate's decision and noted that the delegate had access to [Mr D's] [social media] page where it was posted that he was engaged to [Ms F]. The applicant said that the information on the [social media] page was false because [Mr D] was also worried that he would also face discrimination because he was gay.
46. The Tribunal referred the applicant and his agent to the Department's file and noted that the Department had placed a s.438(1)(a) certificate on its file regarding the Tribunal's discretion to disclose certain documents. The Tribunal noted that the Department certified the documents were subject to a claim of public interest immunity. The Tribunal told the agent that it found the certificate to be valid. The Tribunal noted however that it was of the view that it was appropriate to disclose the following information to the applicant because it was relevant.

47. [Information deleted]. The Tribunal noted that the information was relevant because it was inconsistent with his claims that [Mr B] was his friend who gave him the passport. Subject to what he had to say the Tribunal would find he his evidence is not credible and not accept his claim. The applicant did not request time before responding to the information. The applicant said that [details deleted].

48. *Allegations made to the Department about the applicant's claims*

49. The applicant told the Tribunal that he had a falling out with a person called [Mr A] who first helped him when he arrived in Australia. The applicant said that [Mr A] provided information to the Department which was false. The Tribunal invited the applicant to expand on his claims. The applicant said that [Mr A] helped him complete his visa application form and was the only person who knew his claims. The applicant said that [Mr A] wrote to the Department and said the he (the applicant) is not gay and is telling women that he has made a false claim in support of his protection visa application. The applicant's agent submitted that the Tribunal should disregard this information. The agent submitted that there was a disagreement between [Mr A] but did not expand on her claims.
50. The Tribunal notes that according to the delegate's decision anonymous allegations were made to the Department by telephone [in] July 2015. It was alleged that the applicant is using dating apps to find dates with women and is having casual relationships with females in Australia and is telling those females that he has falsely claimed protection from being gay. Source alleges he is a friend of the applicant.
51. The Tribunal has also had regard to the applicant's response to the allegations. The Tribunal is aware that false allegations can easily be made by anonymous sources for various reasons and in the circumstances has decided to exercise caution and not to place any weight on the information.

52. *Did the applicant provide a bogus document as evidence of his identity?*

53. The issue in this case is whether the grant of the visa is prevented by s.91WA because the applicant has provided a bogus document as evidence of his identity, nationality or citizenship, without reasonable excuse.
54. The Tribunal wrote to the applicant before the hearing and advised him that although the delegate in this matter made no findings in relation to s.91WA the Tribunal will be raising the issue with him at the hearing. The Tribunal explained to the applicant that according to his evidence he entered Australia on [a Country 1] passport in the name of [Mr B] which was not his true name.
55. At the hearing the Tribunal noted that he disclosed in his protection visa application (at question 31) that he travelled to Australia on the [Country 1] passport issued in the name of [Mr B]. He said that [Mr B] was his friend who helped him escape and gave him his passport.
56. The Tribunal explained to the applicant that he provided a bogus document namely the [Country 1] passport as evidence of his identity when he arrived in Australia. Tribunal explained to the applicant that because he provided a bogus document as evidence of his identity, the Act would require the Tribunal to refuse his application for a protection visa in the absence of a reasonable explanation for providing the bogus document.
57. Having considered the applicant's evidence the Tribunal finds that [in] August 2014 the applicant entered Australia at [a named] airport as the holder of a [temporary] visa and [Country 1] passport number [specified]. The Tribunal finds that both the visa and the passport were issued in the name of [Mr B] which was not the applicant's true identity.

58. The Tribunal finds that [Country 1] passport [number] issued in the name of [Mr B] is a bogus document, namely a document which purports to have been, but was not, issued in respect of the person. The Tribunal finds that the applicant has presented a bogus document as evidence of his identity when he entered Australia.
59. The terms of s.91WA do not specify the context in which that provision will be triggered. There is no express limitation as to whom the bogus documents must have been provided (such as the Department of Immigration or the Tribunal), or whether they must have been provided in the context of the current protection visa application. On its face, it appears that the section could be enabled by the past provision of bogus documents or destruction of documents, unrelated to the application at hand. This was the interpretation applied by the Federal Circuit Court in *BGM16 v MIBP*,² holding that s.91WA will have application to bogus documents which are provided by applicants as evidence of their identity, nationality or citizenship, in relation to past visa applications or upon their arrival in Australia.³ The Court was of the view that, having regard to the ordinary meaning of the provision and taking account of its statutory context and purpose, there was no warrant for reading in a temporal limitation to the provision.⁴ The Tribunal also notes that bogus documents considered in *BGM16 v MIBP* were provided by the applicant in relation to previous visa applications made prior to 18 April 2015. Therefore, on this interpretation of s.91WA there is no issue in relation to the application of the provision to bogus documents provided before the provision came into effect.
60. *Does the applicant have a reasonable explanation for providing the bogus document?*
61. The applicant said he used the bogus document as evidence of his identity because it was the quickest way to leave [Country 1]. The applicant said that he knew it was an offence and he feels bad about that. The applicant said that when he applied for the protection visa he provided his original documents. The applicant said he did not lodge an application for a visa to travel to Australia using his Albanian passport because it would take a longer time.
62. The Tribunal has had regard to the nature and quality of the applicant's explanation for having provided a bogus document as evidence of his identity. For the following reasons the Tribunal is not satisfied that the applicant has a reasonable explanation for providing a bogus document.
63. The Tribunal did not find the applicant to be a credible witness. The Tribunal found the applicant's evidence about his sexual orientation vague and inconsistent. The Tribunal does not accept the applicant's claims that he is homosexual. The Tribunal does not accept the applicant's claim that his father in Albania, his [Relative 2] and his [relatives] in [Country 1] made direct threats to kill him because they discovered he was gay.
64. The Tribunal finds the applicant's claim that he was in a long term gay relationship with [Mr D] inconsistent with [Mr D's] [social media] profile. The Tribunal has had regard to the

² *BGM16 v MIBP* [2016] FCCA 2297 (Judge Street, 2 September 2016).

³ In this case, the applicant entered Australia on a visitor visa using a false Greek passport, which he then used when applying for two subsequent tourist visas and a student visa. The Tribunal found that the Greek passport was a bogus document and that the applicant had provided the bogus document as evidence of his identity, nationality, and citizenship. The Tribunal considered that the applicant did not have a reasonable explanation for providing the bogus document and that s.91WA(1) applied to prevent the grant of the visa.

⁴ *BGM16 v MIBP* [2016] FCCA 2297 (Judge Street, 2 September 2016) at [32]-[33].

information in the delegate's decision and notes that [Mr D's] [social media] page states he lived in [Country 1] and became engaged to [Ms F] in April 2011.

65. The Tribunal did not find the applicant's claim that [Mr D] maintained a false [social media] profile in [Country 1] to avoid discrimination as credible. The applicant provided no written evidence from [Mr D] that he was in a relationship despite the relationship continuing when the applicant first arrived in Australia. He provided no evidence from [Mr D] that he faced persecution in [Country 1] and Albania. The Tribunal also found the photographs of the applicant posing with [Mr D] superficial and inconsistent with the [social media] profile and has given them little weight.
66. The Tribunal finds that when the applicant first arrived in Australia he told Department officers that he was in an 18 month relationship with [Ms E]. The Tribunal finds the applicant's answer to be inconsistent with his claim that he is homosexual. The Tribunal does not accept the applicant's explanation that [Ms E] only travelled with him to Australia because he was an inexperienced traveller who did not understand English. The Tribunal notes that it is not uncommon for people with no English language skills to travel from [Country 1] to Australia. The Tribunal also finds the applicant's evidence inconsistent with the fact that he was able to obtain a false [Country 1] passport and attempt to travel to Australia alone in November 2013.
67. [Ms E] has only provided a short statement to the Department that states that she never met [Mr A] and only became [Mr A's] friend on [social media] after she returned to [Country 1]. The Tribunal finds it surprising that the applicant would claim that [Ms E] was a friend who volunteered to provide him with support on his journey to Australia because he was an inexperienced traveller but not provided evidence in support of his claim.
68. The Tribunal does not accept the applicant's claim that he had a friend called [Mr B] who consented to give the applicant his [Country 1] passport to allow him to impersonate him and travel to Australia. The Tribunal finds it surprising that the applicant would claim that [Mr B] was a close friend but he could not confirm his address when questioned at the hearing. The Tribunal also finds it difficult to accept that the applicant happened to have a friend of similar age and physical appearance who would consent to being impersonated and his passport being used for no cost to enable the applicant to travel to Australia. The Tribunal finds that [evidence does] not support the applicant's claim that the passport was voluntarily given to him by [Mr B]. The Tribunal also finds the applicant's explanation difficult to accept in light of his earlier evidence that he had contacts in [Country 1] and was able to purchase a false [Country 1] passport in November 2013 in an attempt to travel to Australia. The Tribunal also notes that although DEU deemed that the passport in the name of [Mr B] was a legitimately manufactured document that may have been restitched.
69. The Tribunal also found the applicant's claim that his life was threatened in [Country 1] inconsistent with his evidence that he did not seek protection from the [Country 1] authorities because he thought they would treat him as a family matter. The Tribunal has had regard to country information detailed in the delegate's decision and notes that the [Country 1] Government has an effective police force and protects its residents according to international standards regardless of their ethnicity or sexual orientation.
70. In 2015 [a] Human Rights Report⁵ provided the following information on acts of violence, discrimination, and other abuses based on sexual orientation and gender identity in [Country 1]:

71. [Information deleted].

⁵[Information deleted].

72. The Tribunal notes that the applicant's evidence that he had obtained [Country 1] residence which was valid for an indefinite period [and] could live and work anywhere in [Country 1] and the European Union. Country information confirms that all major [Country 1] towns and cities have an active gay life, especially [cities], and [City 1], which considers itself the "gay capital" of [Country 1] and is the headquarters of [the] country's leading gay organization.⁶
73. The Tribunal finds it inconsistent that the applicant would claim his life was threatened in [City 1] but he made no attempt to relocate and live in another city in [Country 1] to avoid persecution. The Tribunal notes that [Country 1] has a population of almost [number] million people and does not accept the applicant's claims that he would be located by his relatives if he relocated in [Country 1].
74. The Tribunal notes that the applicant was not in a situation where he did not have access to a valid travel document (passport) to enable him to flee from persecution as is the case with some asylum seekers who fear persecution from the State. The Tribunal notes that the applicant does not claim to fear persecution from the Albanian or [Country 1] authorities. The Tribunal finds that the applicant did have access to a valid biometric Albanian passport which was issued in [2010].
75. The Tribunal does not find it reasonable for the applicant to provide a bogus document as to his identity in order to enter Australia to escape persecution in circumstances where he had a valid biometric Albanian passport which would enable him to legally depart from Albania and/or [Country 1] and seek asylum in Europe.
76. The Tribunal notes that the applicant has given evidence that he has travelled widely in Europe for holidays and transit without the need to apply for a visa. Country information confirms that although seeking asylum is not considered a valid reason to be granted entry into Schengen countries, Albanians can and do seek asylum at the border of a Schengen country and will not be refused entry. For example, in September 2016 the number of Albanians seeking asylums in Germany rose to 2,250.⁷ Amnesty International reports that 20,000 Albanians have applied for asylum in the European Union countries during 2016 although the rates of success were very low.⁸
77. The Tribunal does not accept it is reasonable for the applicant to provide a bogus document as to his identity in order to enter Australia to escape persecution in circumstances where he could have travelled to any Schengen zone country without a visa and applied for asylum.
78. The Tribunal found the applicant's claim that he did not apply for an Australia visa because he thought it was difficult or would take too long lacking in credibility. The Tribunal notes the applicant had access to a valid biometric Albanian passport and he has never attempted to apply for an Australian visa in his own name using his Albanian passport. The Tribunal further notes that according to his evidence after he was prevented from traveling to Australia on the false passport issued in the name of [Mr C] he waited for about 12 months before he travelled to Australia which seems inconsistent with his claims that he did not have time to apply for an Australian visa.

⁶[Information deleted].

⁷ Albanian Asylum-Seekers numbers in Germany rise again, 20 October 2016, *Balkan Insight* <http://www.balkaninsight.com/en/article/large-number-of-albanians-still-asking-for-asylum-in-germany-10-19-2016>

⁸ <https://www.amnesty.org/en/countries/europe-and-central-asia/albania/report-albania/>

79. In conclusion, the Tribunal has taken into account the applicant's explanation in providing a bogus document as evidence of his identity. As detailed above, the Tribunal has not accepted the applicant's claim that he feared persecution in Albania or [Country 1] because he was homosexual as credible. The Tribunal therefore does not accept the applicant's explanation that he engaged in the conduct abovementioned out of fear for his safety. In these circumstances, the Tribunal does not find his explanation for having provided the bogus document as evidence of his identity at the border to be reasonable.
80. The Tribunal is not satisfied that the applicant has a reasonable explanation for providing a bogus document as evidence of his identity. Accordingly, consistent with s.91WA of the Act, the Tribunal must affirm the decision to refuse to grant the applicant a protection visa.

DECISION

81. The Tribunal affirms the decision not to grant the applicant a Protection visa.

Christopher Smolicz
Member

ATTACHMENT - Extract from *Migration Act 1958*

5 (1) Interpretation

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

91WA Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
 - (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
 - (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
 - (b) either:
 - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.